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28 SOUTHWEST AIRLINES CO.

20 UNITED STATES DISTRICT COURT

21 NORTHERN DISTRICT OF CALIFORNIA

22 RORESTE REFUERZO, on behalf of  
23 himself and others similarly situated,

24 Plaintiff,

25 v.

26 SOUTHWEST AIRLINES CO.,

27 Defendant.

28 Case No: 3:22-cv-00868-JSC

**UPDATED JOINT CASE MANAGEMENT  
STATEMENT AND [PROPOSED] ORDER**

Date: June 2, 2022  
Time: 1:30 p.m.  
Location: Courtroom 8, 19<sup>th</sup> Floor  
Phillip Burton Federal Building  
450 Golden Gate Avenue  
San Francisco, CA 94102

CASE NO: 3:22-CV-00868-JSC

UPDATED JOINT CASE MANAGEMENT STATEMENT AND [PROPOSED] ORDER

1 Plaintiff Roreste Refuerzo (“Plaintiff”) and Defendant Southwest Airlines Co. (“Defendant”) by  
 2 and through their undersigned counsel of record, submit this Updated Joint Case Management Statement  
 3 & Proposed Order pursuant to the Standing Order for All Judges of the Norther District of California,  
 4 Civil Local Rule 16-9, and the Court’s Order regarding Defendant’s Motion to Dismiss (ECF No. 25).

5 **1. Jurisdiction and Service**

6 The Court has original jurisdiction over this action under 28 U.S.C. § 1331. In addition, the  
 7 Court has supplemental jurisdiction over all of Plaintiff’s state law claims pursuant to 28 U.S.C. §  
 8 1337(a).

9 Defendant Southwest Airlines Co. has been served.

10 **2. Facts**

11 **A. Plaintiff**

12 On March 1, 2019, Southwest unilaterally changed its policy on how Flight Attendants using  
 13 intermittent FMLA leave were subject to disciplinary points. (Dkt. No. 13-3). Under this policy change,  
 14 Flight Attendants were no longer eligible for record improvement such that disciplinary points would  
 15 be removed from their record when they exercised their right to intermittent FMLA leave. This policy  
 16 functions to penalize flight attendants for taking leave protected under the FMLA or CFRA. (Compl.,  
 17 ¶ 15) Southwest attaches a negative consequence to taking protected leave because employees who  
 18 exercise their right to intermittent leave are no longer eligible for a benefit of a 2-point deduction while  
 19 Flight Attendants who do not use intermittent FMLA leave, and are otherwise eligible, are eligible for  
 20 the benefit of point reductions. The effect of this policy change led to Lead Plaintiff Refuerzo’s  
 21 termination on February 13, 2020 for no other reason than his utilization of intermittent FMLA leave.  
 22 (Compl. ¶ 16-24.) Plaintiff brought his claims as a proposed class pursuant to Rule 23(b)(3) in order to  
 23 represent similarly situated employees who were terminated because of this FMLA leave policy change  
 24 (*id.* ¶ 25-26) and a proposed class pursuant to Rule 23(b)(2) and/or (c)(4) of employees who have not  
 25 yet been terminated but have continued to accrue disciplinary points for their use of FMLA leave and  
 26 remain subject to the unlawful policy. (*Id.* at ¶ 27)

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1           **B.       Defendant**

2           Defendant employed Plaintiff as a Flight Attendant. Defendant denies that Plaintiff has suffered  
 3 any damages as a result of any alleged wrongdoing by Defendant. At all relevant times, Defendant  
 4 denies that it violated the relevant provisions under the Family Medical Leave Act (“FMLA”), California  
 5 Family Rights Act (“CFRA”), and the California Business and Professions Code §§ 17200 et seq.  
 6 Defendant terminated Plaintiff’s employment in February 2020 after it was determined that Plaintiff  
 7 violated Defendant’s attendance policy.

8           **3.       Legal Issues**

9           **A.       Plaintiff**

10          The legal issues in dispute are:

11          Whether Defendant’s unilateral policy change interfered with Plaintiff and the Proposed  
 12 Class(es) rights under the FMLA.

13          Whether Defendant’s unilateral policy change interfered with Plaintiff and the Proposed  
 14 California Sub-Class(es) rights under the CFRA.

15          Whether Defendant’s unilateral policy change discriminated against Plaintiff and the Proposed  
 16 Class(es) rights under the FMLA.

17          Whether Defendant’s unilateral policy change discriminated against Plaintiff and the Proposed  
 18 California Sub-Class(es) rights under the CFRA.

19          Whether Defendant’s unilateral policy change led to wrongful termination of Plaintiff and the  
 20 Proposed California Sub-Class(es).

21          Whether Defendant’s unilateral policy change was an unlawful, unfair or fraudulent business  
 22 practice.

23          Whether Defendant’s unilateral policy change may be enjoined or declared unlawful as a  
 24 violation of the FMLA or CFRA.

25           **B.       Defendant**

26          Defendant contends that legal issues in dispute in this case include, without limitation, the  
 27 following:

28          Whether Plaintiff’s claims are preempted by the Railway Labor Act.

1           Whether Plaintiff can establish the essential elements of his alleged causes of action.

2           Based on Plaintiff's Complaint, Defendant anticipates that Plaintiff will dispute whether  
3 Defendant interfered with the FMLA.

4           Based on Plaintiff's Complaint, Defendant anticipates that Plaintiff will dispute whether  
5 Defendant discriminated and retaliated against Plaintiff and others similarly situated in violation of the  
6 FMLA.

7           Based on Plaintiff's Complaint, Defendant anticipates that Plaintiff will dispute whether  
8 Defendant discriminated and retaliated against Plaintiff and others similarly situated in violation of the  
9 CFRA.

10          Based on Plaintiff's Complaint, Defendant anticipates Plaintiff will dispute whether Defendant's  
11 employment policies and practices provided Defendant with some unfair competitive business  
12 advantage that injured Plaintiff and others similarly situated, if any, in some way. Defendant anticipates  
13 that this claim will be derivative of each one of Plaintiff's other claims.

14          Whether Plaintiff's claims are barred, in whole or in part, because he did not exhaust his  
15 administrative remedies in the manner required by law.

16          Whether Plaintiff's claims are barred because Defendant acted at all times in good faith based  
17 solely on legitimate business reasons wholly unrelated to any discriminatory, retaliatory or statutorily  
18 impermissible factors, none of which were a substantial motivating factor regarding his employment.

19          Whether Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, laches,  
20 unclean hands, and/or after-acquired evidence.

21          Whether Plaintiff failed to mitigate his claimed damages.

22          Whether Plaintiff's alleged damages are barred or offset by the avoidable consequences doctrine.

23          Whether the putative class meet the various requirements for certification under Federal Rules  
24 of Civil Procedure Rule 23.

25          Whether Plaintiff or any putative class member is entitled to recover any damages or remedies.

26          ///

27          ///

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1       **4. Motions**

2           **A. Plaintiff**

3           Plaintiff will file a motion for Rule 23 class certification. Plaintiff may file a motion for summary  
4 judgment or partial summary judgment if appropriate.

5           **B. Defendant**

6           Defendant anticipates potentially filing a motion for summary judgment or, in the alternative,  
7 partial summary judgment. Defendant may file a motion to deny Rule 23 class certification and/or a  
8 motion for decertification. Defendant reserves the right to file other motions, as necessary.

9       **5. Amendment of Pleadings**

10          Plaintiff anticipates that he may amend the Complaint and proposes a deadline of September 9,  
11 2022.

12          Defendant proposes July 12, 2022, as the deadline for the parties to amend their pleadings.

13       **6. Evidence Preservation**

14          The parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored  
15 Information and have met and conferred pursuant to Federal Rules of Civil Procedure Rule 26 regarding  
16 reasonable and proportionate steps taken to preserve evidence relevant to the issues reasonably evident  
17 in this action.

18       **7. Disclosures**

19          The parties exchanged initial disclosures pursuant to Federal Rules of Civil Procedure Rule 26(a)  
20 on May 6, 2022.

21       **8. Discovery**

22           **A. Plaintiff**

23          Plaintiff will serve written discovery and take necessary fact witness and Rule 30(b)(6)  
24 depositions. Plaintiff intends to conduct discovery in the most efficient and economical manner  
25 possible. Because many facts are relevant to both class certification and the merits of the causes of  
26 action, Plaintiff is opposed to bifurcating discovery, which will result in inefficiencies including  
27 unnecessary disputes or motion practice.

28          ///

1           **B.     Defendant**

2           Defendant anticipates conducting written discovery and taking depositions. At this time, no  
 3 discovery disputes between the parties have arisen.

4           Defendant proposes a standard bifurcation of pre and post certification discovery issues. First,  
 5 there will be an initial, pre-certification period (with written discovery requests, followed by depositions  
 6 of Plaintiff and Defendant's Rule 30(b)(6) witnesses) focused on: (a) Plaintiff's working conditions and  
 7 relationship with Defendant; and (b) Defendant's personnel and operational policies applicable to  
 8 Plaintiff and putative class members. Second, in the event a class is certified, there will be a post-  
 9 certification period focused on discovery going to the merits of Plaintiff's claims and other information  
 10 going to the quantification of monetary relief.

11          **9.     Class Actions**

12          **A.     Plaintiff**

13          Plaintiff seeks to represent several different class and sub-classes (Compl. ¶ 25-30.) Plaintiff  
 14 believes that the Rule 23 requirements can be met. Plaintiff also asserts that the FLSA collective action  
 15 remedies are not applicable to this case. (Dkt No. 16.) Plaintiff and counsel have reviewed the Court's  
 16 Procedural Guidance for Class Action Settlements.

17          **B.     Defendant**

18          Defendant contends that Plaintiff's class claims do not meet the certification requirements of  
 19 Federal Rules of Civil Procedure Rule 23. Defendant and its counsel have reviewed the Court's  
 20 Procedural Guidance for Class Action Settlements.

21          **10.    Related Cases**

22          The parties are not aware of any related cases except for the matter of Transport Workers Union  
 23 v. Southwest Airlines, Group Grievance No. 66383, pending before the Southwest Airlines Flight  
 24 Attendant System Board of Adjustment, before Arbitrator Stephen Crable, Esq.

25          **11.    Relief**

26          **A.     Plaintiff**

27          Plaintiff on behalf of himself and the proposed Classes seeks compensatory damages, special  
 28 damages, general damages, injunctive and declaratory relief, costs, and attorney's fees.

1           **B.       Defendant**

2           Defendant contends that it is not liable for any damages arising from Plaintiff's or the putative  
 3 class members' claims. Even if Plaintiff could prevail on any of his claims, the calculation of damages  
 4 would be limited by applicable defenses.

5           **12. Settlement and ADR**

6           Plaintiff does not believe that ADR is appropriate until after some preliminary discovery is  
 7 complete. However, at the appropriate time Plaintiff is open to mediation after the preliminary discovery  
 8 is conducted.

9           Defendant believes that mediation may be appropriate after some preliminary discovery has been  
 10 done.

11           **13. Consent to Magistrate Judge For All Purposes**

12           The parties have consented to District Judge Corley for all purposes.

13           **14. Other References**

14           The parties at this time do not believe the case is suitable for reference to binding arbitration, a  
 15 special master, or the Judicial Panel on Multidistrict Litigation.

16           **15. Narrowing of Issues**

17           At this early stage of the case, the parties are not aware of any issues that can be narrowed by  
 18 agreement or motion. After the close of discovery, the parties may be able to narrow the issues for trial  
 19 either via stipulation or motion. Defendant believes that the matter should be bifurcated according to  
 20 pre and post certification discovery.

21           **16. Expedited Trial Procedure**

22           The parties do not believe that this action can be handled under the Expedited Trial Procedure  
 23 of General Order No. 64 Attachment A.

24           **17. Scheduling**

25           **A. Plaintiff**

26           Plaintiff anticipates that a class certification motion can be filed after preliminary discovery has  
 27 commenced. Plaintiff's proposed Class Certification Schedule:

28           ///

1 Plaintiff's Motion Due: November 8, 2022  
 2 Opposition: December 23, 2022  
 3 Reply: February 6, 2023  
 4 Hearing: March 9, 2023

5 **B. Defendant**

6 Defendant believes that the appropriate trial schedule and the duration of the trial will depend on  
 7 the outcome of the anticipated class certification motion by Plaintiff under Federal Rules of Civil  
 8 Procedure Rule 23.

9 Nevertheless, because this Court's Order requests proposed dates, Defendant proposes the  
 10 following dates, subject to possible requests to modify these dates depending on the outcome of the class  
 11 certification motion:

12	EVENT	DATE
13	Conclusion of Pre-Certification Discovery	May 12, 2023
14	Plaintiff's Deadline to file Motion for Class Certification	May 12, 2023
15	Plaintiff to disclose any expert witnesses and submit any 16 expert reports in support of Motion for Class Certification	May 12, 2023
17	Defendant's deadline to file Opposition to Plaintiff's Motion for Class Certification	July 14, 2023
18	Defendant to disclose any expert witnesses and submit any expert reports in Opposition to Plaintiff's Motion for 19 Class Certification	July 14, 2023
20	Plaintiff to file Reply in support of Motion for Class Certification	September 15, 2023
21		
22		
23		
24		

Hearing on Motion for Class Certification / Further Status Conference (to discuss schedule for post-certification discovery, additional motions, dispositive motions, and trial).	October 19, 2023
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18. **Trial**

Pursuant to Plaintiff's election, the matter will be heard before a jury. The anticipated length is largely dependent upon this Court's determination of Plaintiff's anticipated Motion for Class Certification. Depending on the outcome thereof, the prospective trial may range from 15-20 days.

19. **Disclosure of Non-party Interested Entities or Persons**

The parties have filed their Certifications of Interested Parties or Persons pursuant to Civil L.R. 3-15.

20. **Professional Conduct**

The attorneys of record have reviewed the Guidelines for Professional Conduct for the Northern District of California.

Dated: May 26, 2022

ERLICH LAW FIRM, P.C.

By: /s/ Jason M. Erlich

JASON M. ERLICH  
Attorneys for Plaintiff and Proposed Class and Subclass RORESTE REFUERZO

Dated: May 26, 2022

FISHER & PHILLIPS LLP

By: /s/ Kevin L. Quan

ANNIE LAU  
MEGAN F. CLARK  
KEVIN L. QUAN  
DANIEL FARRINGTON  
Attorneys for Defendant  
SOUTHWEST AIRLINES CO.

1                   **ECF ATTESTATION**

2                   Pursuant to Local Rule 5-1(h)(3) regarding signatures, I attest under penalty of perjury that  
3 concurrence in the filing of this document has been obtained from each of the other signatories thereto.

4  
5                   Dated: May 26, 2022

6                   */s/ Kevin L. Quan*

7                   KEVIN L. QUAN

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1                   **CASE MANAGEMENT ORDER**

2                   The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved  
3                   as the Case Management Order for this case and all parties shall comply with its provisions.

4                   **IT IS SO ORDERED.**

5  
6                   Dated:

7                   \_\_\_\_\_  
8                   Hon. Jacqueline Scott Corley  
9                   District Judge  
10                  United States District Court

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